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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 21st January 2025

S.R.O. No. 119/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated 30th September 2024 passed in the ID Case No. 06 of 2018 [under Section 2-A(2)] passed by the Presiding officer, Labour Court, Sambalpur on the industrial dispute between the Management of Basanta-Surya Educational and Charitable Trust, 2. Mr. Srikumar Patra, President, 3. Mr. Srinibas Patra, Secretary, 4. Principal (Deleted vide order, dated the 23rd December 2021), (All - At AIMS College of +2 Science, Sambalpur-768006), 5. The Regional Director, Higher Education, Budharaja, Sambalpur-768004 and Shri Sribanta Kumar Dash, Age-35 years, S/o Shri Golek Dash, R/O Shantinagar, P.S. Ainthapali, Dist. Sambalpur is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 6 of 2018

Dated the 30th September 2024

Present :

Shri Raghu Nandan Das, LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

- | | |
|---|---------------------------|
| 1. The Management of Basanta-Surya Educational and Charitable Trust, | .. First Party—Management |
| 2. Mr. Srikumar Patra, President, | |
| 3. Mr. Srinibas Patra, Secretary, | |
| 4. Principal (Deleted Vide Order, dated the 23rd December 2021), (All-At AIMS College of +2 Science, Sambalpur-768006). | |
| 5. The Regional Director, Higher Education, Budharaja, Sambalpur-768004. | |

Vrs.

Shri Sribanta Kumar Dash,
aged about 35 Years,
S/o Shri Golek Dash,
R/o Shantinagar,
P.S. Ainthapali, Dist. Sambalpur.

. . Second Party—Workman

Appearances :

Shri R.N. Debata, Advocate, Sambalpur	. . For the Workman
Shri B.K. Purohit, Advocate, Sambalpur	. . For the Management Nos. 1 to 3
None	. . For the Management No. 5
Date of conclusion of argument	. . 26th September 2024
Date of order	. . 30th September 2024

AWARD

This case arises out of an application filed under Section 2-A (2) the I.D. Act, 1947 by the above named workman with a prayer to declare the termination of his service by way of refusal of employment w.e.f. the 19th December 2017 by the management as illegal and unjustified, and to direct the management to reinstate him into service with full back wages, service benefits, compensation and costs.

2. The case of the workman in brief is that he was appointed as a faculty member in Odia in the AIMS College of +2 Science since dated the 13th August 2009 with a consolidated salary of Rs. 25,000 per month by the management No.1. His services under the management were extremely satisfactory without any stigma. The Management No.1. carries on various businesses. The Management No. 4 is a paid officer of the Management No.1. The management has employed more than 100 employees to run its business. Surprisingly, on the 16th December 2017 at about 1.30 P.M. the Management No. 3 told the workman not to come to College till settlement of the Bus matter. The said Bus matter had no nexus with the employment of the workman.

2.1 It is also the case of the workman that on the 19th December 2017, when he went to the College and put signature on the Attendance Register, the Management No. 3 again directed him not to come to College as his services has been terminated. When the workman requested for arrear salary and for written order of termination, the latter did not listen to it saying that oral order is sufficient. Then, the Management No. 3 issued a show-cause Notice to the workman, to which the workman submitted a representation, dated the 28th December 2017 to the Management No. 3 seeking some information. On dated the 11th January 2018, the workman received Letter No. 301/AIMS, dated the 9th January 2018 from Management No. 3 intimating his services are no more required.

2.2 For some ulterior reasons the management have not paid salary to the workman from the 1st November 2017. The statutory gratuity, benefits of EPF, etc. and other dues have not been paid to him. The aforesaid acts are illegal and unjustified. The workman has not been paid with any retrenchment compensation. The management was served with a Notice, dated the 15th February 2018 to recall the workman into service, but to no effect. Though it is obligatory for the Management No. 5 to supervise the functioning of said College, it failed to do so.

2.3. The refusal of employment/termination of the workman is an act of victimization and without jurisdiction, which is required to be quashed. This workman is entitled to be reinstated into service with full back wages and solatium for mental agony suffered by him. With the above averments, the workman has filed the present case or the reliefs noted *supra*.

3. On the other hand, the Management Nos. 1 to 4 has filed their joint W.S. contending that the workman was appointed as a faculty member in Odia on a consolidated sum of Rs. 3, 000 per month, which was purely temporary and subject to satisfactory performance. He was warned in the Appointment Letter, dated the 6th August 2009 about termination of service at any time without assigning any reason. It is also contended that the service of the workman under the management were not extremely satisfactory. The Management No. 4 is no more in service. It is denied that the Management No. 1 carries on various businesses.

3.1 Most of the employees of the institution are widows, divorcees, who hail from the downtrodden people of the society to secure their livelihood. The Institution is not meant for any profit motive, but to serve the society. It is denied that the Management No. 3 told the workman not to come to College till settlement of Bus matter.

It is also contended that on the 26th October 2017, the workman made agreement with Management No. 3 in writing, in which a vehicle of the Management No.1 had been purchased by him in the month of November, 2016 for an amount of Rs. 7, 00, 000 . On the same date, the Management No. 3 delivered the vehicle to the workman, who paid Rs.2, 00, 000 through cheque to the Management No. 3. It was stipulated that the workman will pay the balance amount within six months, which was not complied by him. The cheque was also dishonoured by the Bank, after which the Management No. 3 issued legal Notice to the workman for payment of Rs. 2, 00, 000 within 15 days. The workman received the letter and intimated about deposit of said amount in the Account of AIMS College, but remained silent regarding payment of balance money of Rs. 5,00,000.

3.2 The pleading of the workman regarding the statement of the Management No. 3 that his oral order is sufficient, has also been denied. The claim of the workman relating to EPF benefits has also been contended to be unjustified. As the workman was not performing his duty smoothly and satisfactorily, there was no illegality by the management in not extending EPF benefits.

It is alleged that the workman that he had not submitted the mark and the valued scripts of VST-1 Examination, 2017 in time, which created problems. He also put his signatures on the Attendance Register without taking classes. He was not maintaining the Lesson Plan and Daily Progress Register, and did not submit the same before the Principal for counter signature. That apart, he remained absent on the day of visit of sambalpur University inspection team. For the above reasons, the Management No. 3 issued termination Letter No. 301/AIMS, dated the 9th January 2018.

3.3 It is also contended that, the workman is not entitled to get any EPF benefits as per the audit of EPF Authority, so also, the auditor of the College. He had never claimed such EPF benefits earlier and is claiming the same now with ulterior motive in order to avoid payment of balance money relating to purchase of bus. It is denied that the Management No. 5 committed any illegality in connivance with other managements. The workman has filed this petition in order to extract money, and to harass and defame the management of the College, which has earned a good name in comparison to other Institutions.

Moreover, the workman is not at all entitled to get reappointment, as his performance was not at all good. He has filed a case bearing CMA (PW) No. 2/2018 under the provision of the

payment of wages Act on the same cause of action. As such, this proceeding is likely to be dropped on that ground alone. This case is also hopelessly barred to make eligible the workman to get benefit under the provision of the EPF Act. As the workman has taken false and concocted allegations against the AIMS College, its officers and secretary, he requires to be prosecuted. with the above contention, it is prayed to reject the case with costs.

4. The Management No. 5 has filed its W.S. vide Letter No. 18001RDE, dated the 18th May 2019 contending that the workman had filed a petition in the Court of the Authority under the payment of wages Act, 1936-*cum*-SDJM, Sambalpur vide CMA (PW) No. 2/2018 earlier claiming salary of Rs.1, 86, 987 from the College and later, he filed this I.D. Case. The disbursement of salary to the employees is an internal affair of the college and this Management No. 5 has got no role in the same. A report was called from Management No. 3 relating to CMA (PW) No. 2/2018, and after receipt of the same, the same has been filed in the Court through the G.P., Sambalpur (Copy of such letter has been enclosed).

5. The workman has filed his rejoinder on dated the 6th August 2019 to the W.S. filed by the Management No. 1 to 4 and Management No. 5, in which he has denied all the allegations made against him in such W.S. The Management No. 3 has also filed a Consolidated W.S. on dated the 7th April 2022, to which the workman has filed additional rejoinder on dated the 11st May 2022.

6. Out of the pleading of the parties, this Court had framed the following issues :

- (i) Whether the application is maintainable ?
- (ii) Whether the termination of services of Shri Sribanta kumar Dash by way of refusal employ ment w.e.f. the 19th December 2017 by the Management is legal and/or justified ?
- (iii) If not, to what reliefs workman Shri Sribanta Kumar Dash is entitled ?

7. In order to prove this case, the workman has examined himself as W.W. No. 1. He has also exhibited documents marked as Exts.1 to Ext. 16. On the other hand, the Management Nos.1 to 4 has examined the Management No. 3 (Srinibas Patra) as M.W. No.1 on their behalf. No other witness was examined on behalf of the Managements. Ext. A to Ext. D are marked on behalf of these managements.

8. *Issue No. (i)* —This issue is taken first being the basic issue. It is to be decided whether this case is maintainable or not because of the contrary stand taken by the workman and the contesting Management Nos. 1 to 4. It is the specific pleading of the workman that he is a workman, who was appointed as a 'faculty member' in odia in AIMS of +2 Science since dated the 13th August 2009. This pleading of the workman has been specifically denied by the contesting Management Nos. 1 to 4 at Paras.12 & 13 of their consolidated W.S.

The workman has relied upon Ext.1 which is the original Appointment Letter issued by Management No. 3 in his favour on dated the 1st August 2009. It is clearly mentioned and reveals from this document that the workman was appointed as a 'faculty member' in 'Odia' with a consolidated salary. This fact gets support from Ext. 8 which is the Letter No. 17, dated the 6th August 2009, again issued by Management No. 3 showing that the workman was appointed as a 'faculty member' in 'odia' with a consolidated remuneration of Rs. 3,000 per month. It also reveals that the workman was to join on or before dated the 13rd August 2009.

8.1 Much argument was put forth by the learned Counsels for both the parties on this issue. Learned Counsel for the Management Nos. 1 to 4 contended that the workman will not come under the purview of workman under Section 2 (s) of the I.D. Act, as because he was appointed as a 'faculty member' in 'Odia', which means 'Lecturer', and whose duty is to teach the students exclusively. As such, a Lecturer cannot come under the definition of workman within the purview of the I.D. Act. Reliance was placed on the Judgment of the Hon'ble Apex Court reported in AIR 1988 SC 1700 in the Case of Miss. A. Sundarambal Vrs. Government of Goa, Daman & Diu and others.

On the other hand, it is urged by the learned counsel for the workman that, apart from teaching, the workman was doing various jobs of the College, Hostels, Transportation, etc. as and when directed by the Secretary of the Management. It is also pleaded that he was also engaged by the Management in procuring students from market for admission into the College. He was never appointed as a 'Lecturer' exclusively.

8.2 In this regard, again the evidence on record is to be scrutinized carefully. In the W.S. filed on dated the 9th July 2019, the Management Nos. 1 to 4, at Para.1, have admitted that the workman was appointed as a 'faculty member' in 'Odia' in AIMS College of +2 Science Since dated the 13th August 2009. M.W. No.1 at Para. 4 of his affidavit evidence has also admitted said fact, which he has deposed on oath before this Court. At Para. 30 of his cross-examination, he has deposed that "The teaching staffs are designated as Lecturers and not Readers". At Para. 40, he has specifically deposed that "It is a fact that the Principal, Lecturers, Cahier, Accountant, Faculty Members, etc. are not enlisted with the EPFO". It is contended by the learned counsel for the workman that the evidence of the M.W. No.1 at Para. 40, referred to above, clearly reveals that 'Lecturer' and 'faculty member' are two distinct and separate posts. Had the same been one and same post, then M.W. No.1 would not have stated the words 'Lecturer' and 'faculty member' separately.

8.3 Now, coming to the evidence of the workman examined as W.W. No. 1, it appears that he has filed his first affidavit evidence on the 1st November 2021 and an additional affidavit evidence on the 11st May 2022, and an additional evidence of dated the 1st November 2022, he has specifically averred at Para. 22 that, "in addition to imparting teaching, he was also looking after the affairs of the college and hostel, office canteen, transportation, library and other duties as and when assigned by the management satisfactorily".

Similarly, he has averred almost the same thing at Para.1 of his additional affidavit evidence filed on the 11st May 2022. During his cross-examination, he has not been specifically cross-examined on this point by the learned counsel for the Management Nos. 1 to 4, so as to disbelieve this testimony. Nothing has been elicited from his mouth to hold that his evidence in this regard is not believable. That apart, at Para. 45 of his cross-examination, it has been only suggested to him that he was only teaching the students and doing its allied activities, and he was not doing any of the works as averred in his both the affidavit evidence, to his W.W. No.1 has denied. The contesting managements could not be able to rebut this evidence of the workman. So, the pleading of the workman that he was not exclusively teaching the students, rather he was doing other work of the Institution, gets fortified.

8.4 From the above evidence on record, this Court comes to conclusion that the present workman, as a faculty member, was not exclusively teaching the students of the Institution, rather he was engaged in other various activities, as averred and proved by him, which are not allied to

teaching or ancillary to it. Now coming to Ext. 6, it appears that the Management No. 3 himself has issued the same allowing the workman to continue his bus flying business apart from his teaching profession. As such, it appears that on the one hand the contesting managements are pleading that the workman is exclusively a teacher, on the other hand they are allowing him to continue his bus flying business. It appears that if the contesting managements would have accepted the workman exclusively as a teacher, they would not have allowed him for such business.

8.5 Now, coming to the judgment relied upon by the learned counsel for the workman A. Sundarambal (*supra*), the Hon'ble Apex Court has clearly hold in the decision at Para. 6 that, an Educational Institution has to be treated as an Industry in view of the decision in the Bangalore Water supply and Sewerage Board Vrs. A. Rajappa. In the same decision, the Hon'ble Court has also hold at Para. 10 that, teachers employed by Educational Institutions for imparting education cannot be called as "workmen" within the meaning of Section. 2(s) of the Act. It is held that imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation.

However, the facts of the instant case are quite different. It has been specifically proved by the workman that he was not exclusively employed for teaching purpose, rather he was doing many other works of the contesting managements, which were not even remotely related to the noble vocation of teaching.

8.6 From the above analysis of the evidence on record, this Court comes to conclusion that the present workman will very wellcome under the definition of workman provided under Section. 2(s) of the I.D. Act. This primary/basic issue is accordingly decided in favour of the workman.

9. *Issue No. (ii)* —It is the specific pleading of the workman that surprisingly on the 16th December 2017 at about 1.30 P.M., Management No. 3 told him not to come to College till settlement of bus matter. On the 19th December 2017, again when he went to College and put signature on the Attendance Register, the Management No. 3 directed him not to come to College as his services has been terminated. When the workman requested for written order of termination, said management No. 3 did not listen to the same by saying that the oral order is sufficient. He has averrd the above pleading in his examination-in-chief. He has been cross-examined on the above facts by learned Counsel for the contesting managements. At Para. 37 of his cross-examination, he has been suggested about the false hood of the above facts, to which he has denied.

9.1 At Para. 39 of his cross-examination, he has been suggested about commission of some illegalities relating to his profession as a teacher, to which he has denied. But, no documentary evidence to that effect has been filed by the contesting managements. Now, coming to the evidence of M.W. No.1, he has deposed at Paras. 7 & 8 of his affidavit evidence regarding the irregularities committed by the workman, which ultimately led to termination of service of the workman by the management.

9.2 But it is pertinent to mention here that no documentary evidence to that effect has been filed. Now, Para. 51 of cross-examination of M.W. No.1 becomes very much relevant. He has been cross-examined by the learned counsel for the workman on the averments made at Para. 7 of his affidavit evidence. He has deposed that "I cannot say, for which parts of his service, the workman was a chronic absentee. I also cannot say the Letter No and date, by which the workman had been warned for his chronic absenteeism. Such letter has not been filed in this case. The principal had intimated me in writing about the allegations of singing Attendance Register by the workman

unauthorizedly. But I do not remember the date of such intimation in writing. I do not remember, if such intimation has been filed in writing”.

9.3 Then, at Para. 52, M.W. No.1 has also deposed that “I do not remember, if written warning letter was issued to the workman for his alleged mis-conduct in the conduct of texamination,valuation of papers, publication of results, etc.”.

The above evidence of M.W. No. 1 clearly reveals that the allegations made against the workman are bald allegations with an ulterior motive to terminate his service. It is alleged that the workman was a chronic absentee, but no document to that effect has been filed. The workman has been warned, it is averred, but there is no document to this effect. The principal intimated M.W. No. 1 in writing about the unauthorized signing of Attendance Register by the workman, but no such writing has been produced in this case. The workman has been warned about various mis-conducts, but no such letter has been produced by the managements. What prevented the contesting managements to produce those documents before this Court is not forthcoming.

9.4 The contesting managements have not proved the allegations made against the workman. All the allegations leveled against the workman could have very well be proved by producing documentary evidence to that effect, which the contesting managements have not done. The contesting managements have only relied upon documents relating to creation of Trust, and they have not relied upon any document showing commission of the mischiefs/irregularities by the workman as, alleged. In such a situation, this Court cannot believe such allegations leveled against the workman. Rather, it appears that for any other ulterior reason, the Management No. 3 terminated the service of the workman.without any proved mis-conduct,for no reason, Management No. 3, as it appears from the evidence on record, illegally terminated the workman by an oral order.

9.5 Para. 58 of the cross-examination of M.W. No. 1 discloses that, he had conducted enquiry against the workman on the alleged allegations made against him prior to his termination. But, no document to that effect has also been filed by Management No. 3. Moreover, the same Para. also discloses that M.W. No. 3 does not remember, if any charge sheet was issued to the workman on the allegations made against him; if any Notice pay or retrenchment compensation had been paid to him prior to issuance of termination order. As such, it appears that even the fundamental principle of natural justice had not been followed by the contesting managements while terminating the workman from service. He had not been giving any opportunity of hearing, either oral or in writing, prior to his termination, as clearly appears from the evidence on record.

9.6 It also appears that on the 16th December 2017, the Management No. 3 told the workman not to come to College, and on the 9th December 2017, the Management No. 3 intimated him that his service has been terminated. It appears that, thereafter, on the 20th December 2017, the Management No. 3 issued Ext. 16 to the workman calling for explanation why disciplinary action will not be taken against him. It is pertinent to mention that prior to that no such explanation was called for from him on the alleged allegations, and when the workman asked the Management No. 3 to give him written order of termination on the 19th December 2017, Ext. 16 was issued on the 20th December 2017.

The matter did not stop there. When on the 28th December 2017, the workman wrote letter vide Ext. 13 to the Management No. 3 to supply him copies of documents basing on which allegation have been leveled against him, the Management No. 3 issued Ext. 2 stating that the service of the workman is no more required and the same be treated as one month Notice. It appears that the workman was not given any opportunity of hearing to say about the allegations leveled against him, and thereafter, he was directly terminated from his service by Management No. 3 vide Ext. 2, w.e.f. the 19th December 2017. From the above, it clearly reveals that the termination of the workman was illegal and unjustified. There is no doubt about the same. As such, this issue is also decided in favour of the workman and against the contesting managements.

10. *Issue No. (iii)* —From the above analysis of evidence on record, this Court has come to conclusion that the present workman is a workman within the meaning of Section 2(s) of the I.D. Act and his termination w.e.f. the 19th December 2017 by the Management No. 3 was illegal and unjustified.

In the case of *Deepali Gundu Surwase Vrs. K.J.A. Mahavidyalaya (D.Ed.) and others* (2013) 10 SCC 324, the Hon'ble Apex Court has set forth detailed guidelines at Para. 33 of the said judgment, which are to be followed while awarding or not, reinstatement with continuity of service and back wages, in case of wrongful termination of service.

10.1 In Para. 33 (i) of the said judgment, it has been held that "In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule". The Hon'ble Court has also set forth other guidelines to be followed in such situation. In the instant case, the workman has prayed for reinstatement into service with full back wages, other service benefits and solatium for the mental agony suffered by him. That apart, Section 11 A of the I.D. Act also empowers the Labour Court to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or to give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, if it is satisfied that such order of discharge or dismissal was not justified.

10.2 Admittedly, the workman of this case has fought this legal battle for long seven years, who has been victimized by his Employer/contesting managements, being tainted with malice. In the facts and circumstances of this case, this Court feels it proper to reinstate the workman with full back wages and other service benefits, as per his legal entitlements.

Hence, it is awarded as follows :

AWARD

This case filed by workman Shri Sribanta Kumar Dash is decided on contest in his favour and against the contesting First Party Management Nos. 1 to 3, but without any costs. The termination of service of workman Shri Dash w.e.f. the 19th December 2017 by the first party management No. 3 is held to be illegal and unjustified.

The first party management Nos. 1 to 3 are hereby directed to reinstate workman Shri Sribanta Kumar Dash in his former post with full back wages and all statutory benefits, as per his legal entitlements. If the workman has received any pecuniary benefits from any other forums in the mean tiine, the same shall be adjusted accordingly from the back wages.

Dictated and corrected by me.

RAGHU NANDAN DAS
30-09-2024
Presiding Officer
Labour Court, Sambalpur

RAGHU NANDAN DAS
30-09-2024
Presiding Officer
Labour Court, Sambalpur

[No. 701—LESI-IR-ID-0112/2024-LESI]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government

List of witness examined on behalf of the second party workman :

W.W. 1 : Shri Sribanta Kumar Dash

List of witness examined on behalf of the first party management Nos. 1 to 4:

M.W. 1 : Shri Srinibas Patra

List of documents marked as exhibits on behalf of the second party workman :

Ext. 1 : Office Order No. 17, dated the 1st August 2009 of the AIMS College of +2 Science.

Ext. 2 : Letter No. 301/AIMS, dated the 9th January 2018 of the AIMS College of +2 Science.

Ext. 3 : Office copy of Advocate Notice, dated the 15th February 2018

Ext. 4 : Copy of conciliation petition

Ext 4/1 : Endorsement with Seal of the D.L.O., Sambalpur

Ext. 5 : Six numbers of Postal Receipts

Ext. 6 : No objection Certificate issued by Management No. 3, dated the 4th August 2017

Ext. 7 : Statement of Bank Account of workman

Ext. 8 : Letter No.17, dated the 6th August 2009 issued by management

Ext. 9 : Letter No. 334/AIMS, dated the 4th April 2018

Ext. 10 : Portion (advertisement) of daily "Sambad", dated the 28th May 2023

Ext. 11 : Portion (advertisement) of daily "Sambad", dated the 2nd June 2023

Ext. 12 : Logo of Institution of M.W.No.1 (AIMS College)

Ext. 13 : Copy of letter dated the 28th December 2017 sent by workman to Management No.3

Ext. 13/a: Postal receipt

Ext. 14 : Letter No. 323/AIMS/18, dated the 13th February 2018 issued by Management No. 3 to workman.

Ext.15 : Reply of learned counsel of first party management

Ext. 16 : Letter No. 294/AIMS, dated the 20th December 2017 issued by the first party management No. 1 to workman.

List of documents marked as exhibits on behalf of the first party management Nos. 1 to 4:

Ext. A : Xerox copy of Registered Trust deed, dated the 5th December 2008

Ext. B : Xerox copy of Registered Appointment of New Trustees in place of retiring Trustees, dated the 27th October 2009.

Ext. C : Xerox copy of Registered Appointment of New Trustee to the Trust in place of deceased Trustee, dated the 17th December 2020.

Ext. D : Copy of Resolution of Board of Trustees, dated the 24th April 2009.

